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August 9, 2010

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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In the Matter of Federal-State Joint Board on Universal Service*
Twin Valley Telephone, Inc., Petition for Waiver of Sections 36.612(a)(3) and 54.305(d)(1) of the Commission's Rules, CC Docket No. 96-45

Dear Ms. Dortch:

Please find enclosed for filing Twin Valley Telephone, Inc.'s Petition for Waiver of Sections 36.612(a)(3) and 54.305(d)(1) of the Commission's Rules. The requisite filing fee has been remitted to U.S. Bank via U.S. mail today. Please do not hesitate to contact the undersigned with any questions regarding this petition.

Sincerely,

/s/ Bennett L. Ross

Bennett L. Ross

cc: Sharon Gillett
Lisa Gelb
Carol Mattey
Alexander Minard
Katie King

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Federal-State Joint Board on Universal Service	))))	
Twin Valley Telephone, Inc.	))	CC Docket No. 96-45
Petition for Waiver of Sections 36.612(a)(3) and 54.305(d)(1) of the Commission's Rules	))	

To: Wireline Competition Bureau

TWIN VALLEY TELEPHONE, INC.
PETITION FOR WAIVER OF SECTIONS 36.12 AND 54.305 OF THE COMMISSION'S RULES

I. INTRODUCTION AND SUMMARY

Twin Valley Telephone, Inc. ("Twin Valley"), by counsel, respectfully requests an expedited waiver[1] of Commission Rules 36.612 and 54.305,[2] of the March 30, 2010 deadline for filing loop-related expense data to receive safety valve support ("the filing deadline"). Twin Valley qualified to receive safety valve support for exchanges acquired from Sprint/Embarq in March 2006 based on its substantial investment into these acquired exchanges. The Commission itself has recognized that safety valve support is designed to provide "additional support to rural carriers that acquire high-cost exchanges and make post-transaction investments to enhance network infrastructure."[3]

Similar to the facts of *Century-Tel of Central Wisconsin*, Twin Valley missed the March 30, 2010 filing deadline because of confusion concerning the obligation to make a quarterly rather than

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1 47 C.F.R. § 1.3.
2 47 C.F.R §§ 36.612(a)(3) and 54.305
3 *Federal-State Joint Board on Universal Service, CenturyTel of C. Wis., LLC*, 21 FCC Rcd 14633 (Dec. 2006).

annual calendar year filing. The quarterly filing is optional except when a rural LEC establishes a fiscal year as its base year for purposes of safety valve support. If a rural LEC establishes a base year using quarterly data, it is required to make a quarterly filing with National Exchange Carrier Association (NECA) in the same quarter in each subsequent year.

This unfortunate misunderstanding has the potential to impose unduly harsh financial consequences on Twin Valley that could severely disrupt Twin Valley's operations. Failure to grant this waiver would result in the loss of *twelve months* of safety valve support, totaling over $2 million which in turn could jeopardize Twin Valley's Rural Utility Service loans. The amount at stake is approximately equivalent to the amount of Twin Valley's net income. Under similar circumstances in the past, the Commission has avoided this harsh result by granting limited waiver of these filing rules. Accordingly, Twin Valley asks the Commission to promptly grant a one-time, limited waiver of the March 30, 2010 filing deadline to avoid extraordinary financial hardship which will undermine the Commission's efforts to deploy advanced services to rural America. Twin Valley reasonably relied on the Commission's safety valve support for purposes of upgrading services to rural customers in the acquired exchanges, and the public interest is best served by proceeding to distribute the universal service monies committed by Commission rule to these rural Kansas communities.

II. BACKGROUND

Twin Valley is an Eligible Telecommunications Carrier ("ETC") for certain service areas within Kansas. It serves approximately 6,500 customers located in over 2,400 square miles of north-central Kansas. On March 1, 2006, Twin Valley acquired approximately 5,000 customers located in thirteen exchanges from Sprint/Embarq. These customers currently number approximately 4,500. The transfer of control was approved by the FCC on January 3, 2006.

However, the FCC did not approve Twin Valley's study area waiver until September 2006.[4] At the time Twin Valley acquired these lines, the local exchange facilities were in extremely poor condition. For example, over 90 percent of the acquired customers did not have access to advanced telecommunications services. Twin Valley Telephone invested over $50 million in the acquired areas to improve service quality and make available quality voice and advanced services to 100% of these rural customers. The availability of such services is essential to the economies in these rural areas.

Due to the substantial upgrades made by Twin Valley in the acquired exchanges, it qualified for safety valve support as defined in 54.305 of the Commission's Rules. Safety valve support is a component of the expense adjustment that allows rural carriers to recover some high loop costs associated with post acquisition investments made by the acquiring carrier. The safety valve support expense adjustments are largely determined and submitted in accordance with Sections 36.611, 36.612 and 36.631 of the Commission's Rules.

Commission Rule 54.305 defines two critical expense adjustment components for determining safety valve support. The first is the index year or the costs for the first year of operation of the acquired exchanges. Commission Rule 54.305(d)(1) states as follows: "[a]t the acquiring carrier's option, the first year of operation for the transferred exchanges for purposes of calculating safety valve support shall commence at the beginning of either the first calendar year *or the next calendar quarter following the transfer of exchanges*" (emphasis added). As such, a carrier can choose either the next calendar year or a fiscal year for its index year. The second part

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4 *United Telephone Company of Kansas, United Telephone Company of Eastern Kansas and, Twin Valley Telephone, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36 of the Commission's Rules; Petition for Waiver of Section 69.3(e)(11) of the Commission's Rules, Petition for Clarification or Waiver of Section 54.305 of the Commission's Rules*, Order, 21 FCC Rcd 10111 (2006).

of the safety valve support calculation concerns the costs for subsequent years which are determined based on the Part 36 Rules.

To qualify for safety valve support, Twin Valley established an index year which included expense data from the October 1, 2006 until September 30, 2007.[5] Pursuant to Commission Rule 36.612(a)(3), Twin Valley reported these data to NECA and USAC on March 30, 2008.[6] As such, Twin Valley began receiving safety valve support in the fourth quarter of 2008. Throughout 2008 and again on March 30, 2009, Twin Valley exercised its option to make quarterly filings with NECA because of significant investments that it made in the acquired exchanges. Twin Valley's safety valve support accordingly steadily increased as its investment expenses increased as demonstrated in the quarterly submissions. Indeed, effective July 2010, Twin Valley fully expected to begin to receive approximately $170,000 per month in safety valve support which would increase to over $178,000 in January 2011.

On August 3, 2010, NECA notified Twin Valley that it would not receive its safety valve support effective July 2010. Twin Valley made inquiries to USAC and USAC personnel explained that safety valve support payments were suspended because Twin Valley did not make its March 30, 2010 quarterly filing. Although this filing is otherwise optional, because Twin Valley established a fiscal year starting on October 1, 2006, it was required to make this quarterly filing. Similar to *Century-Tel of Central Wisconsin*, Twin Valley relied on the NECA reminder process for purposes of making its cost filings. NECA routinely contacts carriers to discuss the absence of a filing. Here, no such process is in place with respect to quarterly updates, even those that are required as a condition of the carrier's receipt of safety valve support.

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5 *See* Appendix A.

6 *See* Appendix A..

USAC personnel informed Twin Valley that unless a waiver is granted of the filing deadline, safety valve support payments would be suspended for a full twelve months. Thus, without expeditious action to approve this waiver request, Twin Valley would permanently lose over $2 million in safety valve support and associated recovery of operating costs.

When informed by NECA that it had missed the filing deadline, Twin Valley provided the cost submission to NECA on August 9, 2010. USAC will not process this cost submission without the grant of this waiver because the data was filed after the due date specified in Commission Rule 36.612(a)(3).

III. COMMISSION PRECEDENT AND THE PUBLIC INTEREST SUPPORT THIS LIMITED WAIVER OF THE MARCH 30, 2010 FILING DEADLINE

Section 1.3 of the Commission's rules permits it to waive any of its rules "for good cause shown." 47 C.F.R. §1.3. The Commission may waive its rules when particular facts make strict compliance inconsistent with the public interest and, in making this determination, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[7] In granting a waiver, the Commission must generally determine, therefore: (1) that special circumstances warrant a deviation from the general rule; and (2) that such deviation will serve the public interest. Twin Valley's request meets the waiver criteria and is very similar to the circumstances previously found by the Commission to warrant waiver of these same rules

[7] Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

a. *Commission Precedent Supports Finding That These Are Unique Circumstances Justifying Waiver Of The Filing Deadline*

The Commission has found that Commission Rules 36.612(a) and 54.305(d)(1) interact in a confusing manner.[8] Commission Rule 36.612(a)(3) permits, but does not require, each rural incumbent LEC to update its yearly cost information on a quarterly basis.[9] Rural incumbent LECs that choose not to make these quarterly filings receive high cost loop support based on the annual calendar year data contained in the mandatory report filed pursuant to Commission Rule 36.611 on July 31st of each year.[10]

Commission Rule 54.305(d)(1) can turn this optional quarterly update into a mandatory filing. Commission Rule 54.305(d)(1) permits an incumbent LEC to establish a fiscal index year for safety valve support purposes based on the first four complete calendar quarters following the incumbent LEC's purchase of the supported exchanges, even if these do not all fall within the same calendar year. The incumbent LEC's safety valve support support in such a case is based on year-over-year changes between the incumbent LEC's costs in the fiscal index year and its costs in subsequent corresponding fiscal years. To receive safety valve support, therefore, a rural incumbent LEC must in subsequent years file the otherwise optional quarterly update under Commission Rule 36.612(a) that corresponds to the four calendar quarters it originally used as the safety valve support index year.

The Commission has recognized that "[u]nder section 36.612 of the Commission's rules, rural carriers have the option of submitting loop cost data to NECA on a quarterly basis."[11] Here, Twin Valley determined to establish a fiscal year index for purposes of safety valve support which

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8 *Century-Tel of Central Wisconsin*, 21 FCC Rcd at 14634.

9 47 C.F.R. §36.612(a).

10 47 C.F. R. §36.611.

11 *Century-Tel of Central Wisconsin*, 21 FCC Rcd at 14634.

started on October 1, 2006 and which required that expense data be filed on March 30, 2008. Thus, what is typically thought of as an optional deadline for a quarterly filing had actually become a mandatory filing based on its earlier decision to use a fiscal year base index. Like *CenturyTel of Central Wisconsin*, Twin Valley was accustomed to NECA reminders of impending due dates for required filings and did not realize the necessity of filing on March 30, 2010. Significantly, Twin Valley has taken steps to ensure future compliance with all safety valve support filing deadlines. For the same reasons the Commission found persuasive in *CenturyTel of Central Wisconsin*, the Commission should find that special circumstances warrant waiver of filing deadline rules in this instance.

b. *The Public Interest Is Best Served By Ensuring Safety Valve Support Gets To Rural Carriers That Make Investment In Underserved Rural Exchanges*

The public interest would be best served by a deviation from the filing deadline. The Commission established its safety valve support mechanism precisely to encourage new investment by rural carriers in acquired exchanges that may have been neglected by their former owners.[12] The Commission recognized that its prior rule, strictly limiting support for acquired exchanges to the amount the seller was receiving before the sale, harmed rural America by creating disincentives to new infrastructure investment. As the Commission concluded, the former rule "may discourage rural carriers from acquiring high-cost exchanges from carriers with low average costs and may prevent rural carriers from receiving support for new investments in recently-acquired high-cost exchanges."[13] As such, failure to grant this waiver request would undermine the incentives to invest in rural networks that the safety valve mechanism was designed to create.

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12 *Federal-State Joint Board on Universal Service, Multi-Association Group Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 11244, 11282 at paras. 93-94 (2001)(*Rural Task Force Order*).

13 *Id.* at para. 97.

Here, if the Commission fails to promptly grant this waiver request, the result is exacerbated by the fact that Twin Valley would lose 12 months of safety valve support. The financial consequences of such a loss would be extraordinary. First, Twin Valley would face a loss of over $2 million of safety valve support. This represents most if not all of the annual net income available to Twin Valley for the 12-month period. Thus, loss of safety valve support imposes significant financial harm. Additionally, the revenue from the safety valve support mechanism is essential for the recovery of capital costs of network upgrades and servicing the debt that Twin Valley incurred to fund those upgrades. This is the precise set of financial dominoes that the Commission recognized would be against the public interest in *Century-Tel of Central Wisconsin.* Accordingly, consistent with its prior public interest findings, the Commission should grant waiver of the filing deadline for safety valve support to "ensure that consumers have and maintain access to service at just, reasonable, and affordable rates."[14]

The Commission further recognized that the loss of safety valve support for an entire calendar year would likely have a negative rate effect and ultimately harm the quality of services offered in rural exchanges. If permanent loss of funds is realized, Twin Valley would likely need to attempt to make up the funds elsewhere. With an approximate loss of $2.1 million, this would represent approximately $500 per customer in the acquired exchanges. This would place significant pressure to increase service rates for customers in the acquired exchanges. The majority of customers in these very rural areas simply can not afford significant rate increases and the Commission should therefore grant this one-time waiver request.

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[14] *Century-Tel of Central Wisconsin*, 21 FCC Rcd at 14634.

IV. CONCLUSION

For all of the reasons discussed above, the Commission should find that Twin Valley has established the special circumstances and public interest necessity to grant a limited waiver of the March 30, 2010 filing deadline, specified in Commission Rules 36.612 and 54.305 for purposes of calculating the safety valve support expense adjustment effective in July 2010. The timely receipt of the significant amount of safety valve support by Twin Valley will promote universal service and serve the public interest.

Respectfully submitted,

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August 9, 2010

APPENDIX A

High Cost Loop/Expense Adjustment Data Reporting and Payment Dates

Part 36 Rule	Submission ID	Timeframe of Reported Data	Filing Date	Payments Effected
36.611	Year-01	12 Months Ending December 31	July 31	January – December of following year
36.612(a)(2)	Year-02	12 Months Ending March 31	September 30	January – December of following year
36.612(a)(3)	Year-03	12 Months Ending June 30	December 30	April – December of following year
36.612(a)(4)	Year-04	12 Months Ending September 30	March 30	July – December of following year